

Federal Railroad Administration, DOT

§ 234.5

at highway-rail and pathway grade crossings.

234.305 Remedial actions in response to reports of unsafe conditions at highway-rail and pathway grade crossings.

234.306 Multiple dispatching or maintaining railroads with respect to the same highway-rail or pathway grade crossing; appointment of responsible railroad.

234.307 Use of third-party telephone service by dispatching and maintaining railroads.

234.309 ENS signs in general.

234.311 ENS sign placement and maintenance.

234.313 Recordkeeping.

234.315 Electronic recordkeeping.

234.317 Compliance dates.

APPENDIX A TO PART 234—SCHEDULE OF CIVIL PENALTIES

APPENDIX B TO PART 234—ALTERNATE METHODS OF PROTECTION UNDER 49 CFR 234.105(C), 234.106, AND 234.107(C).

AUTHORITY: 49 U.S.C. 20103, 20107, 20152, 21301, 21304, 21311, 22501 note; Pub. L. 110-432, Div. A, Secs. 202, 205; 28 U.S.C. 2461, note; and 49 CFR 1.89.

SOURCE: 61 FR 31806, June 20, 1996, unless otherwise noted.

Subpart A—General

§ 234.1 Scope.

(a) This part prescribes minimum—

(1) Maintenance, inspection, and testing standards for highway-rail grade crossing warning systems;

(2) Standards for the reporting of failures of highway-rail grade crossing warning systems and for the actions that railroads must take when such systems malfunction;

(3) Requirements for particular identified States to develop State highway-rail grade crossing action plans; and

(4) Requirements that certain railroads establish systems for receiving toll-free telephone calls reporting various unsafe conditions at highway-rail grade crossings and pathway grade crossings, and for taking certain actions in response to those calls.

(b) This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

[77 FR 35190, June 12, 2012]

§ 234.3 Application and responsibility for compliance.

(a) With the exception of § 234.11, this part applies to all railroads except the following:

(1) Operations of a plant railroad as defined in § 234.5;

(2) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation; or

(3) Tourist, scenic, historic, or excursion operations conducted only on track used exclusively for that purpose (*i.e.*, there is no freight, intercity passenger, or commuter passenger railroad operation on the track) and only on track inside an installation that is insular; *i.e.*, the operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of the public—except a business guest, a licensee of the railroad or an affiliated entity, or a trespasser—would be affected by the operation. An operation will not be considered insular if one or more of the following exists on its line:

(i) A public highway-rail crossing that is in use;

(ii) An at-grade rail crossing that is in use;

(iii) A bridge over a public road or waters used for commercial navigation; or

(iv) A common corridor with a railroad, *i.e.*, its operations are within 30 feet of those of any railroad.

(b) Although the duties imposed by this part are generally stated in terms of the duty of a railroad, each person, including a contractor or subcontractor for a railroad, who performs any task covered by this part, shall perform that task in accordance with this part.

[77 FR 35190, June 12, 2012]

§ 234.5 Definitions.

As used in this part:

Activation failure means the failure of an active highway-rail grade crossing warning system to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing, or to indicate the presence of a train occupying the crossing, unless

the crossing is provided with an alternative means of active warning to highway users of approaching trains. (This failure indicates to the motorist that it is safe to proceed across the railroad tracks when, in fact, it is not safe to do so.) A grade crossing signal system does not indicate the approach of a train within the meaning of this paragraph if—more than 50% of the flashing lights (not gate arm lights) on any approach lane to the crossing are not functioning as intended, or in the case of an approach lane for which two or more pairs of flashing lights are provided, there is not at least one flashing light pair operating as intended. Back lights on the far side of the crossing are not considered in making these determinations.

Appropriately equipped flagger means a person other than a train crewmember who is equipped with a vest, shirt, or jacket of a color appropriate for daytime flagging such as orange, yellow, strong yellow green or fluorescent versions of these colors or other generally accepted high visibility colors. For nighttime flagging, similar outside garments shall be retro reflective. Acceptable hand signal devices for daytime flagging include “STOP/SLOW” paddles or red flags. For nighttime flagging, a flashlight, lantern, or other lighted signal shall be used. Inasmuch as Part VI of the Federal Highway Administration’s Manual on Uniform Traffic Control Devices addresses standards and guides for flaggers and flagging equipment for highway traffic control, FRA recommends that railroads be aware of the standards and follow them to the greatest extent possible. Copies of the latest MUTCD provisions regarding flagging will be available from FRA, as well as FMCSA, as changes are made in this area.

Credible report of warning system malfunction or credible report of warning system malfunction at a highway-rail grade crossing means a report that contains specific information regarding a malfunction of a highway-rail grade crossing warning system at an identified highway-rail grade crossing, supplied by a railroad employee, law enforcement officer, highway traffic official, or other employee of a public agency acting in an official capacity.

False activation means the activation of a highway-rail grade crossing warning system caused by a condition that requires correction or repair of the grade crossing warning system. (This failure indicates to the motorist that it is not safe to cross the railroad tracks when, in fact, it is safe to do so.)

FRA means the Office of Railroad Safety, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

Highway-rail grade crossing means a location where a public highway, road, street, or private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks at grade.

Partial activation means activation of a highway-rail grade crossing warning system indicating the approach of a train, however, the full intended warning is not provided due to one of the following conditions:

- (1) At non-gated crossings equipped with one pair of lights designed to flash alternately, one of the two lights does not operate properly (and approaching motorists can not clearly see flashing back lights from the warning lights on the other side of the crossing);
- (2) At gated crossings, the gate arm is not in a horizontal position; or
- (3) At gated crossings, any portion of a gate arm is missing if that portion normally had a gate arm flashing light attached.

Plant railroad means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility’s own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation,

Federal Railroad Administration, DOT

§ 234.9

rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

Train means one or more locomotives, with or without cars.

Warning system malfunction or *warning system malfunction at a highway-rail grade crossing* means an activation failure, a partial activation, or a false activation of a highway-rail grade crossing warning system.

[61 FR 31806, June 20, 1996, as amended at 77 FR 35191, June 12, 2012]

§ 234.6 Penalties.

(a) *Civil penalty.* Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part, except for any violation of § 234.11 of this part, or causes the violation of any such requirement is subject to a civil penalty of at least \$650, but not more than \$25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$105,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A to this part contains a schedule of civil penalty amounts used in connection with this rule. The railroad is not responsible for compliance with respect to any condition inconsistent with the technical standards set forth in this part where such variance arises as a result of actions beyond the control of the railroad and the railroad could not have prevented the variance through the exercise of due diligence. The foregoing sentence does not excuse any instance of non-

compliance resulting from the actions of the railroad's employees, agents, or contractors.

(b) *Criminal penalty.* Whoever knowingly and willfully makes, causes to be made, or participates in the making of a false entry in reports required to be filed by this part, or files a false report or other document required to be filed by this part, except for any document filed pursuant to § 234.11 of this part, is subject to a \$5,000 fine and 2 years imprisonment as prescribed by 49 U.S.C. 522(a) and 21311(a).

[74 FR 36558, June 28, 2010, as amended at 77 FR 24422, Apr. 24, 2012]

Subpart B—Reports and Plans

§ 234.7 Accidents involving grade crossing signal failure.

(a) Each railroad shall report to FRA every impact between on-track railroad equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle, or pedestrian at a highway-rail grade crossing involving an activation failure. Notification shall be provided to the National Response Center within 24 hours of occurrence at (800) 424-0201. Complete reports shall thereafter be filed with FRA pursuant to § 234.9 of this part (activation failure report) and 49 CFR 225.11 (accident/incident report).

(b) Each telephone report must state the:

- (1) Name of the railroad;
- (2) Name, title, and telephone number of the individual making the report;
- (3) Time, date, and location of accident;
- (4) U. S. DOT-AAR Grade Crossing Identification Number;
- (5) Circumstances of the accident, including operating details of the grade crossing warning device;
- (6) Number of persons killed or injured, if any;
- (7) Maximum authorized train speed; and
- (8) Posted highway speed limit, if known.

§ 234.9 Grade crossing signal system failure reports.

Each railroad shall report to FRA within 15 days each activation failure